

APPEAL NO. 010057

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on December 6, 2000, the hearing officer resolved the disputed issues by determining that the appellant (claimant) failed to make a good faith attempt to obtain employment commensurate with her ability to work and is not entitled to supplemental income benefits for the sixth and seventh quarters. The claimant's appeal contends that certain findings of fact are against the great weight of the evidence while the respondent (carrier) urges our affirmance.

DECISION

A timely appeal not having been filed by the claimant with the Texas Workers' Compensation Commission (Commission) and the jurisdiction of the Appeals Panel having not been properly invoked, the decision and order of the hearing officer have become final.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on December 14, 2000, under a cover letter of the same date. Rule 102.5(d), effective August 29, 1999, provides that unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed, which in this case would be December 19, 2000. Also, the claimant's appeal states that she received the decision and order on December 19, 2000. Accordingly, the claimant had 15 days after December 19, 2000, or until January 3, 2001, to mail her appeal. The envelope containing the claimant's appeal reflects that it was mailed on January 4, 2001, and, therefore, it is untimely.

The hearing officer's decision and order have become final pursuant to Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge